

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARCO ENRIQUE TORRES, JR.,

Petitioner,

vs.

ROBERT HOUSTON,

Respondent.

CASE NO. 4:13CV3027

**MEMORANDUM
AND ORDER**

This matter is before the Court on Petitioner Marco Enrique Torres, Jr.'s Motion for Reconsideration (Filing No. 20), which seeks reconsideration of this Court's Judgment (Filing No. 17) denying Petitioner's 28 U.S.C. § 2254 Petition. The Motion has been carefully considered and the Motion for Reconsideration is denied (Filing No. 20).

Further, before Petitioner can appeal this Court's decision denying his § 2254 Petition, a certificate of appealability must issue. 28 U.S.C. § 2253(c). A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a district court has rejected a constitutional claim on the merits in the course of denying a § 2254 petition, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" in order to meet the standard contained in § 2253(c). *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When a district court denies a § 2254 petition on procedural grounds without reaching the applicant's underlying constitutional claims on the merits, a certificate of appealability should issue under § 2253(c) when "the prisoner shows, at

least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 478.

The court must either issue a certificate of appealability indicating which issues satisfy the required showing, or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b). For the reasons set forth in this Court's Memorandum and Order denying the § 2254 motion (Filing No. 16), Petitioner has not made a substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c).

Accordingly, the Motion for Reconsideration (Filing No. 20) is denied and this Court will not issue a certificate of appealability in this action.

Accordingly,

IT IS ORDERED:

1. Petitioner's Motion for Reconsideration (Filing No. 20) is denied;
2. A certificate of appealability shall not issue in this action; and
3. The Clerk of the United States District Court for the District of Nebraska shall provide a copy of this order to the Eighth Circuit Court of Appeals.

Dated this 9th day of December, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge